

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of ) DOCKET NO. 2008-0083  
)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
)  
)  
For Approval of Rate Increases and Revised )  
Rate Schedules and Rules. )  
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PUBLIC UTILITIES  
COMMISSION

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FILED

MOTION TO INTERVENE AND BECOME A PARTY

CERTIFICATE OF SERVICE

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<sup>1</sup> A Motion to Appear before the Hawaii Public Utilities Commission was filed with the Commission on August 20, 2008 and is pending approval.

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MOTION TO INTERVENE AND BECOME A PARTY

Pursuant to Hawaii Administrative Rule ("HAR") sec. 6-61-55, this "Motion to Intervene and Become a Party" before the Public Utilities Commission of the State of Hawaii (Docket No. 2008-0083) is respectfully submitted by Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively, "Wal-Mart" or "Movant"), by and through its attorneys.

As grounds for said intervention, Wal-Mart avers as follows:

1. Correspondence. All communication concerning this Application is to be addressed to:

Russell W. Ray, PLLC  
6212-A Old Franconia Road  
Alexandria, VA 22310  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

and

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1099 Alakea Street  
Honolulu, Hawaii 96813  
[bvoss@legalthawaii.com](mailto:bvoss@legalthawaii.com)

2. Movant. Movant's name and business address is as follows:

Wal-Mart  
2001 SE 10<sup>th</sup> Street  
Bentonville, Arkansas 72716-0550

3. Nature of Proceeding. Hawaii Electric Company, Inc. ("HECO") seeks Commission approval of rate increases and revised rate schedules and rules, Docket No. 2008-0083.

4. Compliance with Applicable Rules. H.A.R. §6-61-55 requires that Movant satisfy nine criteria for granting the requested intervention. Paragraphs number five through thirteen, *infra*, set forth those nine criteria.

A motion to intervene in a public utility rate increase case shall be filed no later than ten days after the last public hearing held pursuant to the published notice of hearing.<sup>2</sup> The Commission has not yet held a public hearing in this matter, nor has it published a notice of hearing. Thus, Wal-Mart's petition is timely filed.

5. Nature of Movant's Right to Participate. A person may make an application to intervene (H.A.R. §6-61-55(a)). Wal-Mart is a corporation, meeting the definition of person under H.A.R. §6-61-2. Wal-Mart has a significant interest in this proceeding because it is a large commercial customer of HECO. The interests of a large commercial customer, such as Wal-Mart, will not be adequately represented by other parties to the proceeding and as such, Wal-Mart request's that the Commission allow it to intervene in this proceeding with the full powers and rights granted by the Public Utility Commission,<sup>3</sup> and by the Hawaii Administrative Procedure Act,<sup>4</sup> to intervening parties.

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<sup>2</sup> H.A.R. §6-61-57.

<sup>3</sup> H.A.R. Title 6, Chapter 61.

<sup>4</sup> H.R.S. Title 8, Chapter 91.

The general rule with respect to intervention is that intervention as a party to a proceeding before the Commission is a matter of the sound discretion of the Commission.<sup>5</sup> The Commission exercises this discretion under H.A.R. §6-61-55(d), "intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

6. The nature and extent of the applicant's property, financial and other interests in the pending matter. Wal-Mart is a large commercial customer with five facilities in HECO's service territory. Wal-Mart's facilities include Wal-Mart stores and a Sam's Club. Wal-Mart relies on HECO to supply approximately 23,000,000 kWh/year of energy.

7. The effects of the pending order as to the applicant's interest. HECO proposes to significantly increase these electricity rates. Inasmuch as the issues in this docket directly affect the rate schedules under which Wal-Mart purchases energy, HECO's request for a rate increase could dramatically impact Wal-Mart's cost of energy. Accordingly, this docket will directly and substantially affect Wal-Mart operating expenses through rate impacts.

8. The other means available whereby applicant's interest may be protected. Wal-Mart is not aware of any other means by which its interest may be represented and protected other than its direct involvement in this proceeding.

9. The extent to which the applicant's interest will not be represented by existing parties. The existing parties are HECO and the Consumer Advocate. The Department of Defense has requested intervention, however, the Commission has yet to rule on the Department's request.

For a number of reasons, none of the other parties and anticipated participants can represent Wal-Mart's interests. The Consumer Advocate is required to "represent, protect, and

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<sup>5</sup> *In re Hawaiian Electric Co.*, 56 HAW, 260, 262, 535 P.2d 1102(1975); see also *RE Maui Electric Co.*, Docket No. 7000, Decision and Order No. 116668(June 5, 1992) at 8.

advance the interest of all consumers.” However, in some cases, the Consumer Advocate, in considering the interests of all HECO’s ratepayers, may not necessarily be able to advance the interests of an individual large customer, such as Wal-Mart.<sup>6</sup> This is the case especially with regard to cost allocation and rate design, which are issues in this case that are extremely important to Wal-Mart.

HECO’s interests are in direct contrast to Wal-Mart’s inasmuch as HECO seeks to increase the rates its customers, including Wal-Mart, would be required to pay. The Department of Defense, as a governmental entity, has distinctly different interests from Wal-Mart, a commercial entity. Thus, Wal-Mart’s interests will not be adequately represented by other participants in this docket.

10. The extent to which the applicant’s participation can assist in the development of a sound record. Wal-Mart believes that its participation will enhance the development of a sound record regarding the justness and reasonableness of HECO’s proposed rate increase and rate design. The resources and expertise that Wal-Mart brings to this docket will assist in creating a record representing more diverse points of views that will enable and support a well-reasoned decision. Wal-Mart is the largest private consumer of energy in the United States, and takes service from over 3,000 electric, natural gas, and water utilities. Wal-Mart’s Energy Department works in all facets of energy and utility management. The four-person regulatory team is currently involved in more than 50 rate and policy proceedings and working groups in more than 20 states. Wal-Mart’s managerial and technical staff working on these cases have collectively more than fifty-eight years of experience in the energy industry, including cost of service and rate design. In other states, Wal-Mart has worked productively with the Consumer Advocate,

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<sup>6</sup> See *In re Hawaiian Electric Company, Inc.*, Docket No 4-0113, Consumer Advocate’s Memorandum in Support of the Department of Defense’s Motion to Intervene (filed Jan. 26, 2005) at p. 3.

providing information and assistance when needed and its participation in this case would complement that of the Consumer Advocate.

11. The extent to which the applicant's participation will broaden the issues or delay the proceeding. Wal-Mart's participation in this proceeding will not broaden the issues nor cause any delay in processing the case. Instead, Wal-Mart will focus its participation in this case on how the proposed rate increase will impact Wal-Mart's facilities, as well as the impact that would result from the proposed changes to rate design and cost of service. In fact, Wal-Mart's presentation of the impact of the proposed increase on different commercial customers may actually streamline the Commission's review of HECO's proposed cost of service and rate design adjustments by identifying and proposing solutions to identified flaws.

12. The extent to which the applicant's interest in the proceeding differs from that of the general public. Wal-Mart's interests in this docket differs from that of the general public in that it is a large commercial customer with extensive experience in the regulated and deregulated part of the energy industry, and with multiple retail establishments within HECO's service territory. Wal-Mart appreciates the service that the Consumer Advocate provides to represent the general public of HECO's territory. However, for the reasons discussed in paragraph 9, circumstances of some dockets make it difficult for the Consumer Advocate to simultaneously represent large commercial customers and all other members of the general public, each of which has their own class and different cost of service scenarios.

13. Whether the applicant's position is in support of or in opposition to the relief sought. Generally, Wal-Mart opposes the relief sought by HECO, inasmuch as the proposed level of increase, distribution to the various customer classes, and the design of rates will adversely impact Wal-Mart's operations.

WHEREFORE, Wal-Mart respectfully requests the opportunity to intervene and focus and address specific issues according to its rate class for its multiple retail establishments within HECO's service territory. Wal-Mart requests an order granting its Motion to Intervene and Become a Party hereto with the right to have notice of, and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel, upon brief and at oral argument, if oral argument is granted, and to otherwise be granted full party status herein.

DATED: Honolulu, Hawaii, September 2, 2008.



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BRUCE D. VOSS  
LORI N. TANIGAWA

and

HOLLY RACHEL SMITH<sup>7</sup>

Attorneys for WAL-MART STORES, INC. and  
SAM'S WEST, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2008, copies of the foregoing document  
were duly served on the following party, by U.S. Mail, postage prepaid:

Division of Consumer Advocacy  
Department of Commerce and Consumer Affairs    2 copies  
333 Merchant Street, Room 326  
Honolulu, Hawaii 96813

William A. Bonnet  
Dean K. Matsuura  
Hawaiian Electric Company, Inc.  
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David C. Coker  
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258 Makalapa Drive, Suite 100  
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DATED: Honolulu, Hawaii, September 2, 2008.



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BRUCE D. VOSS  
LORI N. TANIGAWA

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